IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2154 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDA CHEMICALS & 3 - Petitioner(s)
Versus
FULAJI BABAJI & 3 - Respondent(s)

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Appearance :
MR DIPAK R DAVE for Petitioner(s) : 1 - 4.MR KETAN I ACHARYA for Petitioner(s) : 1 - 4.
MR TR MISHRA for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 12/01/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.Dipak R. Dave, on behalf of the petitioners and learned Advocate, Mr.T.R.Mishra, appearing for respondents.

2. In this matter, initially, this Court has issued rule returnable on 1st week of November,2004 and ad-interim relief granted was remained continued by order dated 28th June,2004. This Court by order dated 20th February,2004 directed to petitioners to deposit Rs.10,000/- being Rs.2500/- per workman towards probable cost. That amount has been deposited by petitioners on 4th March,2004. According to prayer made in petition, petitioners have challenged award passed by Labour Court, Ahmedabad dated 9th May,2001 in Reference No.1217 of 1990 and order passed on Misc. Application No.348 of 2001 dated 25th June,2003 in Reference No.1217 of 1990. The services of respondents terminated by petitioners. According to respondents, services were terminated with effect from 28th January,1990. Therefore, dispute was raised against present petitioners by respondents. The Reference No.1217 of 1990 decided by Labour Court, Ahmedabad on 5th March,1997 in absence of petitioners and directed to the petitioners to reinstate all respondents in service with continuity and also to pay full back-wages of interim period. The Labour Court, Ahmedabad in ex-parte award has come to

conclusion from record that notices issued by Court has been served to the petitioners. In spite of that fact, the petitioners were remained absent and no Advocate was engaged by them or no representative of petitioners was remained present when matter was taken up for hearing. Therefore, in absence of petitioners, Labour Court, Ahmedabad has decided the matter ex-parte. Against that ex-parte award, Misc. Application No.239 of 1997 preferred by petitioners under Rule 26-A of Gujarat Industrial Disputes Rules,1966. The Labour Court has considered the submission of petitioners and allowed Misc. Application by order dated 28th January,1998 and set aside ex-parte award dated 5th March,1997 with cost of Rs.500/- to each workman. Thereafter, it is necessary to note that date has been fixed in order itself by the Labour Court for further hearing of main reference on 23rd March,1998. The Labour Court has also clearly mentioned that date to be noted by respective parties for further hearing. Thereafter, again reference was decided by Labour Court, Ahmedabad and petitioners were again remained absent. In para.5, Labour Court has observed that

after allowing the restoration application, notices were issued to petitioners vide Exh.23 and that notices were served vide Exh.24, 25, 26, and 27. Even though petitioners remained absent. Therefore, their right to cross-examine and to lead evidence has been closed by Labour Court. Ultimately, matter was heard by Labour Court in absence of petitioners and passed final order on 9th May,2001 granting reinstatement with continuity of service with full back-wages of interim period and with cost of Rs.500/- to be given to Union. Thereafter, again Misc. Civil Application No.348 of 2001 was preferred by petitioners – Sharda Chemicals and Delta Hydro Carbon. An affidavit in support of application was filed by one Sukumar Gunvantlal Parikh along with Anneuxre-A pointing out certain decisions in support of their application. Then, Labour Court has decided Misc. Civil Application No.348 of 2001 on 25th June,2003 dismissing said application and confirming the earlier award dated 9th May,2001 with cost of Rs.2000/-. These two orders are under challenge by petitioners before this Court.

3. Learned Advocate, Mr.Dave, appearing for petitioners raising contentions that joint reference by four persons against four companies is not maintainable. He also raised contention that respondents – workmen left the job and there was no termination from their side. He also submitted that out of four workmen, only one person – Fulaji Babaji gave evidence. Except that, no other person has given evidence. He also submitted that initial onus upon workman to prove unemployment. Therefore, Labour Court has committed error in granting reinstatement as well as full back-wages of interim period. He relied upon one decision of Punjab and Hariyana High Court reported in 1995 II LLJ 166 in case of Daljeet & Co. (P) Ltd. Vs. State of Punjab and others. He submitted that in said decision, the Punjab & Hariyana High Court has held that if disputes is raised against three companies as employer, then, Labour Court is bound to determine which of the three companies was actual employer. Therefore, matter was remanded back to Labour Court by the Punjab & Hariyana High Court. Relying upon said decision, he submitted that Labour Court has granted reinstatement

against first party as mentioned in terms of reference. Except that, no other submission is made by learned Advocate, Mr.Dave.

4. Learned Advocate, Mr.T.R.Mishra, supporting orders passed by Labour Court and also pointed out that from 1990 onwards, the workmen are without job and on two occasions, award has been passed in absence of petitioners. Though one opportunity was given, same was not availed by petitioners. Therefore, according to him, petition may be dismissed.

5. I have considered the submissions made by learned Advocate, Mr.Dave as well as the decision of Punjab & Hariyana High Court which has been relied on by learned Advocate, Mr.Dave. The Labour Court has examined matter in detail on the basis of record. The termination is dated 28th January,1990. The workmen were working according to statement of claim for more than 6 years with petitioners on daily wages. Dispute was raised immediately from the date of termination. There was no delay in raising

industrial dispute. Copy of statement of claim served to the petitioners. In the evidence of one workman – Fulaji Babaji, he specifically deposed that these four companies are managed by one employer and there was one address and one office where these four companies are managing the affairs in one place. Therefore, petitioners were only one employer having four companies and while working petitioners were transferred by one company to other company as per their requirement. Therefore, in evidence, workman has deposed that four companies which were managed by one family and they were working in all the four companies as per their requirement. Therefore, they joined four companies as an employer because petitioners have not given any appointment letter to the respondents workmen, no presence card, no pay slip, leave card. Therefore, in absence of any documents with the respondents, respondents workmen have joined all four companies being employer which have been managed by one family and person. In first award dated 5th March,1997 passed by Labour Court, Ahmedabad, Labour Court has observed in Para.3 that notices issued by Labour Court to Delta Hydro Carbon

and Sharda Chemicals vide Exh.3 which has been served to both the establishments. So far Parikh Chemicals and Ilda Chemicals Works are concerned, it was returned back with an endorsement that on the same name, no establishment is in existence. Though address of four companies are same, no reply was submitted by these two companies where the notices were served and no Advocate was engaged on their behalf. Workman was examined vide Exh.12 and gave detail about other three workmen, those who were working with him on same post. In deposition also, it is made clear that management of these four companies are of one, one office and one employer of one family members. It is also deposed by workman that as per requirement of each company, they were transferred in four companies as and when work is required by the employer. No documents were given by petitioners to the respondents about presence card, pay slip and leave card. The notice was served by respondents vide Exh.9/1 to petitioners. The notice was also served to Parikh Chemicals and Ilda Chemicals Works vide Exh.9/4 and 9/5 by respondents. But, that was refused to accept the

notice and same has been returned back to respondents. Notice issued by respondents to Delta Hydro Carbon vide Exh.9/6 was served. The Labour Court has observed in Para.5 that management of four companies are one and, therefore, giving one further opportunity to petitioners by Exh.13/1 intimation was served through Regd.A.D. which was served vide Exh.14 as per postal acknowledgment. Even though, a second intimation though served, no one remained personally present on behalf of the petitioners and they ignored the proceedings before Labour Court. The Labour Court has given chance to petitioners after examination of the workmen for cross-examination by issuing notice vide Exh.13 but, that opportunity was also not availed by petitioners. That facts are narrated in Para.5. Therefore, Labour Court having no option to decide the matter in absence of petitioners and accordingly, matter has been decided by the Labour Court ex-parte.

6. Misc. Application No.239 of 1997 which was filed by petitioners was allowed on condition to impose Rs.500/- cost wherein ex-parte order was set

aside and date of further hearing 23rd March,1998 was fixed which is required to be noted by the parties. This order was passed on 28th January,1998. In the said application, on behalf of petitioners, Advocate has appeared. Therefore, it was known to petitioner that matter has been fixed for further hearing on 23rd March,1998. Thereafter, Labour Court has examined the merits of reference and before deciding the matter on merits, a notice was served to petitioners i.e. all the four companies and postal acknowledgment was received back by Labour Court vide Exh.24, 25, 26 and 27. Even though, no one remained present on behalf of petitioners though notice was served by Labour Court. Here, two facts are necessary to be noted; (i) the date of further hearing was fixed by Labour Court in the order itself 23rd March,1998 and (ii) the further notice was served when matter was transferred to other Court. Thereafter, Labour Court has observed in Para.7 that in spite of repeated opportunity given to petitioners, no documentary evidence or oral evidence was produced before him and, therefore, ultimately, Labour Court has decided matter in absence of petitioners by award dated 9th

May,2001. The evidence of workman – Fulaji Babaji vide Exh.12 was admittedly on behalf of other workmen because he narrated the facts of other workmen which were having similar service condition and they were working with Fulaji Babaji. That fact was also noted and observed by Labour Court in award dated 9th May,2001. It is also noted that Misc. Application No.348 of 2001 filed by all the petitioners – Sharda Chemicals and Delta Hydro Carbon, Parikh Chemicals and Ilda Chemicals Works on 9th November,2001 having one common address but, two persons have signed on behalf of Sharda Chemicals and Delta Hydro Carbon. Rest of the two companies have not signed said application and one affidavit by Sukumar Gunvantlal Parikh was filed on behalf of Sharda Chemicals and Delta Hydro Carbon establishments. The case of workman and averments made in statement of claim by respondent workman that four companies are one and same and only one employer has managed affairs of four companies are proved by one affidavit. One person has filed affidavit through Sukumar Gunvantlal Parikh, who has filed this affidavit on behalf of both the establishments – Sharda Chemicals and Delta

Hydro Carbon. Meaning thereby that these four companies are managed by one person or one family situated in one place having one office and common address.

7. Labour Court has examined Misc. Application No.348 of 2001 where Advocate has also appeared on behalf of petitioners. The Labour Court has considered one fact that contention raised by petitioners before Labour Court that from date of award, for more than 3 years no information or notice was served by Labour Court to petitioners. This fact was required to be examined by Labour Court and that has been examined by Labour Court at page-44. Labour Court has observed that vide Exh.23 notices were served to the petitioners and that notices were served vide Exh.24, 25, 26 and 27 after Misc. Application was allowed by Labour Court which was made by petitioners. The Labour Court has considered that it amounts to ignoring and abusing the proceedings before Labour Court by petitioners willfully and knowing fully well the consequence. These are not the persons being uneducated, poor and

ignorant which may not aware about consequence. The Labour Court has considered important aspect that all the four workmen's services were terminated on 28th January,1990 and more than 13 years have passed, even though workmen are not able to get justice from Labour Court due to deliberate and willful negligence on the part of petitioners. The Labour Court has also rightly apprehended that such type of tactics adopted by employer not to remain present and to file such repeated applications which delayed the proceedings before Labour Court, which ultimately surrender the workmen to agree condition of employer or to agree any kind of condition or to settle the matter with employer. Therefore, the finding given by Labour Court that petitioners were intentionally not remained present knowing fully well that matter was fixed on further hearing on 23rd March,1998 and subsequently, notices were served, even though no Advocate was engaged and no one remained present on behalf of petitioners. It is also necessary to note that in Misc. Application No.239 of 1997, Advocate was engaged. Naturally, Advocate must have been known and informed to

petitioners the further date of hearing which was mentioned by the Labour Court in its order, then, why the petitioners remained absent and why the Advocate was engaged by petitioners. For that no explanation is given by petitioners in entire proceedings. It is duty of petitioners to point out sufficient cause, as to why they remained absent from the proceedings and why they were not inquired about the matter, though Advocate was engaged by them and though knowing fully well that date of further hearing 23rd March,1998 mentioned in order itself. No affidavit has been filed by the petitioners and the Advocate, who was engaged by them before the Labour Court for establishing sufficient cause. Therefore, Labour Court has rightly examined the matter in absence of petitioners and facts which are relied on by Labour Court, have proved by respondents workmen by leading proper legal evidence.

8. It is settled law that once party received notice from Court, or date of hearing communicated by Court, then, separate further notice is not necessary. This aspect considered by Gujarat High

Court in case of N.D.Patel & Co. Vs. Manubhai Karsanbhai Parmar and Another, 1984 LAB I.C. 1245, Para.2 of the said judgment is reproduced as under :

> “This award is challenged by the petitioner-company on the ground that no notice has been served upon the petitioner by the Labour Court. It is contended that the proceedings before Labour Court have been carried on in violation of the principles of natural justice inasmuch as no notice of the proceedings was ever served upon the petitioner. In reply affidavit, the workman has filed certain correspondence and at Annexure “F” and “G”two letters have been produced. Annexure- “F” shows that the Secretary of Gujarat Engineering and General Kamdar Union had written a letter addressed to the petitioner-company. By this letter the petitioner-Company was informed that the date of filing reply to the claim statement which was sent to the petitioner along with the letter was May 20, 1980. It was also mentioned in the letter that the information was given as per the direction given by the Labour Court. This letter was replied to by the petitioner by its letter dated April 16, 1980 (Ann.”G”) wherein the petitioner acknowledged the letter dated April 9, 1980. In this letter, the petitioner contended that they were working as Contractor to M/s.Dodsal Private Limited for supplying

labourers on each and every contract and in that view of the matter, the petitioner had no other alternative but to terminate the services the services when the contract for which the workman was engaged was over. It was also mentioned in the letter that the workman was taken in service on daily wage basis and in case there is any possibility of giving a new job in future. It may be noted that in this letter the petitioner has nowhere stated that they were not aware of the proceedings before the Labour Court or that the intimation given by the Secretary of the Union was not proper and sufficient or that it was not in accordance with law. Strangely enough, there is no reference to these two letters in the entire petition which runs into about seven pages. A pointed question was put to the counsel for the petitioner as to why the fact regarding this correspondence particularly Annexures “F” and “G” by which it clearly transpires that the petitioner had a notice of the proceedings before the Labour Court, was not brought to the notice of the Court by mentioning the same in the petitioner ? The petitioner was even given intimation about the next date of hearing by a letter written by the Secretary of the Union as per the direction given by the Labour Court. There is no explanation whatsoever as to why this fact was not brought to the notice of the Court at

> the time of admission of the petition. This is a very important and material fact. Since this important and material fact appears to have been deliberately suppressed from the Court, we are not inclined to interfere with the award passed by the Labour Court on this ground of suppression of material fact alone. Even on merits, we feel that once there is a notice either in prescribed form or in any manner, the party concerned is bound to take cognizance thereof and appear before the Court concerned. It may be noted that it was not contention of the petitioner that it had received notice but since the same was not in prescribed form it had chosen not to appear before the Labour Court. In this view of the matter also, the award passed by the Labour Court is not required to be interfered with. Hence the petition requires to be rejected. Rule discharged with cost."

8.1 Recently almost similar question examined by Supreme Court in case of U.P. State Road Transport Corporation through its Chairman Vs. Omaditya Verma and others, 2005 AIR SCW 3475. Para.5 of the said judgment reads as under:-

> "Thus, on perusal of the affidavit filed in support of dasti service and the acknowledgment due cards, we are satisfied

that all the applicants were duly served and the Registry has rightly reported in the office reports. It was also submitted that after leave was granted, fresh notice should have been issued to the respondents. This contention of learned counsel for the applicants is absolutely misconceived. Proviso to Rule 11, Order XVI of the Supreme Court Rules,1966 clearly provides that if the respondent had been served with the notice in the Special Leave Petition or had filed caveat or had taken notice, no further notice is required after the lodging of the appeal. Notices were served on all the applicants in the Special Leave Petitions i.e. SLP (C) No.18435 of 1998 so far as applicant Nos.1 to 4 are concerned and SLP (C) No.18436 of 1998 so far as applicant Nos.5 and 6 are concerned and they did not choose to appear and contest the proceedings. Therefore, no separate notice was required to be served on them after lodgment of the appeals. Hence, we are satisfied that all the applicants were duly served. Therefore, I.A.Nos.14-17 are misconceived and the same are dismissed. Consequently, I.A.Nos.18-21 which have been filed for grant of ad interim stay, fail and the same are dismissed."

8.2 In case of Narender Vs. Pradeep Kumar, (2005) 5 SCC 372, the Supreme Court in Para.4 observed as

under :

> “We have heard learned counsel for the parties and have also gone through the order of the learned Single Judge of the High Court. The first and foremost point is that when the summons was served on the respondent and he did not appear, he has to think himself for serious lapse on his part. Both learned Additional Rent Controller as well as the learned Rent Control Tribunal have found that the summons was served by registered post with acknowledgment due as well as through the process of the court. Despite that the respondent had chosen not to put in appearance. Therefore, there was no option left on the part of the Additional Rent Controller but to proceed against the respondent. It examined the ex parte order on merit and held that the plaintiff had successfully proved his case under Section 14(1)(h) of the Act. It was also held that an application for setting aside the ex parte decree was filed, but that application was dismissed on 5.3.2003. The respondent did not take up this matter before the higher forum and felt satisfied with the order dated 5.3.2003 dismissing his application for setting aside the ex parte order under Order 9 Rule 13 of the Code of Civil Procedure. Therefore, the ex parte decree passed by the learned Additional Rent Controller became

final. Against this order of the Tribunal, a writ petition under Article 227 of the Constitution was filed and the learned Single Judge only felt only felt persuaded to remand the case back to the Additional Rent Controller for disposal. We fail to understand how can learned Single Judge exercise extraordinary jurisdiction under Article 227 for the benefit of a person who himself has not pursued his application under Section 9 Rule 13 of the Code of Civil Procedure, which was dismissed. The Rent Control Tribunal both on facts and law has found that the view taken by the Additional Rent Controller is correct as the wife of the respondent tenant has purchased a flat and they have alternative accommodation. We do not see any ground for giving this latitude to the respondent. We are of the view that the view taken by the learned Single Judge of the High Court appears to be not sustainable in view of the concurrent finding by the courts below i.e. the Additional Rent Controller as well as the Rent Control Tribunal. No reasons are disclosed in the order of the High Court for holding that the alternative accommodation acquired was not for residential purpose. We do not see any reason for the High Court to have interfered with the matter. Hence, we allow this appeal and set aside the impugned order dated

23.7.2004 passed in Civil Miscellaneous Main No.328 of 2003 by the High Court of Delhi and affirm the orders passed by the Additional Rent Controller as well as the Rent Control Tribunal. There shall be no order as to costs."

8.3 In view of the above observations of High Court and Supreme Court, the contentions raised by petitioners are not accepted. Because in allowing Misc. Application, date of further hearing was fixed and mentioned in order itself. Then also, after allowing application before deciding reference, further notices were served which facts are not denied by petitioners or not able to point out that said observations of Labour Court about service of notice are contrary to record.

9. The contentions raised by learned Advocate, Mr.Dave, that Court has been changed after ex-parte award; no notice from Court and joint reference; workmen left the job and one workman has given evidence – Fulaji Babaji. Except him, no other workman has given evidence. These are the submissions on merits which were not raised by the petitioners

before Labour Court while remaining present in proceedings. Therefore, these submissions are not required to be examined by this Court when the order passed by Labour Court rejecting the Misc. Application for setting aside ex-parte award. Therefore, judgment which has been relied upon by learned Advocate, Mr.Dave, is not helpful to him, looking to facts which are on record that four companies are managed by one employer; one family member and affidavit and documents which have been proved at page-39 that one Sukumar Gunvantlal Parikh has signed affidavit on behalf of both the companies - Sharda Chemicals and Delta Hydro Carbon. He has made averment in the affidavit that he is a partner in both the establishments and he is managing affairs of companies. Meaning thereby that one person managing affairs of two companies, then, deposition of workman that four companies are managed by one family or person is to be correct and, therefore, Labour Court has rightly dealt with matter and petitioners are not able to point out any sufficient cause or any justification to set aside ex-parte award, which was passed on second occasion against

the petitioners. Labour Court has rightly given one opportunity to petitioners to remain present and decided the matter on merits but, intentionally and knowingfully well the consequence, petitioners remained absent, though notices were served by Labour Court. Therefore, Labour Court has rightly decided the matter in absence of petitioners and rightly rejected Misc. Application for setting aside ex-parte award. For that, Labour Court has not committed any error, which found apparently on the face of record. Learned Advocate, Mr.Dave, has not able to point out any error from the record. Looking to the facts that workmen are out of job since 1990 and more than 15 years have been passed, in this situation, this Court has not found proper to interfere with the orders passed by Labour Court rejecting the Misc. Application of petitioners. Therefore, according to my opinion, while exercising extraordinary power under Article 227 of the Constitution of India, there is no justification requiring interference by this Court against the order passed by Labour Court. There is no substance in present petition. Accordingly, present petition

is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs. Registry is directed that amounts of Rs.10,000/- which deposited by petitioners to pay Rs.2500/- each respondent workman by account payee cheque after proper verification.

(H.K.RATHOD,J.)

(vipul)